

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

NO. 2:17-CV-14-FL

BRIAN TIMOTHY SMITH,)
)
Plaintiff,)
)
v.)
)
ERIC V. TILLEY, in his Official Capacity)
as Sheriff of Perquimans County and)
Individually; JAMES FOWDEN,)
Individually; and PRESTON WARD,)
Individually,)

ORDER

Defendants.

This matter is before the court on defendants' motion for partial summary judgment (DE 28) as to plaintiff's second and sixth claims for relief. Pursuant to 28 U.S.C. § 636(b)(1)(B), United States Magistrate Judge James E. Gates entered a memorandum and recommendation (M&R) wherein it is recommended that defendants' motion be granted. No objections to the M&R were filed and the time for objections has passed. In this posture the issues raised are ripe for ruling.

The district court reviews de novo those portions of a magistrate judge's M&R to which specific objections are filed. 28 U.S.C. § 636(b). Absent a specific and timely filed objection, the court reviews only for "clear error," and need not give any explanation for adopting the M&R. Camby v. Davis, 718 F.2d 198, 200 (4th Cir.1983). In this case, the magistrate judge correctly determined that summary judgment is warranted in favor of defendants on plaintiff's second and sixth claims for relief based upon false arrest under 42 U.S.C. § 1983. Defendants demonstrated there is no genuine issue of material fact that probable cause supported the arrest of plaintiff, thereby


precluding a Fourth Amendment claim for false arrest. See Durham v. Horner, 690 F.3d 183, 189-90 (4th Cir. 2012). Thus, the court adopts the M&R and GRANTS defendants' motion.

In light of this ruling, the following claims remain for trial:

- 1) Unlawful search in violation of the Fourth Amendment against defendants in their individual capacity (first claim) (Am. Compl. ¶¶ 22-28);
- 2) Punitive damages against defendants Preston Ward ("Ward") and Eric V. Tilley ("Tilley") in their individual capacities (fourth claim) (Am. Compl. ¶¶ 47-51); and
- 3) Unlawful search in violation of the Fourth Amendment against defendant Tilley in his official capacity (fifth claim) (Am. Compl. ¶¶ 52-57).

Per the court's April 16, 2018, order, the deadline to complete a mediation in this matter now is set **30 days** from the date of this order. In the event claims remain for trial following mediation, the parties shall jointly file, within **45 days** of the date of this order, a joint status report informing of 1) estimated trial length; 2) particular pretrial issues which may require court intervention in advance of trial, if any; and 3) at least three suggested alternative trial dates.

SO ORDERED, this the 25th day of February, 2019.



LOUISE W. FLANAGAN
United States District Judge